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HOUSE BILL 318

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Rhonda S. King

AN ACT

RELATING TO CORRECTIONS; EXPANDING THE PURPOSES OF THE  
CORRECTIONS DEPARTMENT INTENSIVE SUPERVISION FUND; RENAMING THE  
FUND; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-20-6 NMSA 1978 (being Laws 1963,  
Chapter 303, Section 29-18, as amended) is amended to read:

"31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING  
SENTENCE. --The magistrate, metropolitan or district court shall  
attach to its order deferring or suspending sentence [~~such~~]  
reasonable conditions as it may deem necessary to ensure that  
the defendant will observe the laws of the United States and  
the various states and the ordinances of any municipality. The  
defendant upon conviction shall be required to reimburse a law  
enforcement agency or local crime stopper program for the

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1 amount of any reward paid by the agency or program for  
2 information leading to his arrest, prosecution or conviction,  
3 but in no event shall reimbursement to the crime stopper  
4 program preempt restitution to victims pursuant to the  
5 provisions of Section 31-17-1 NMSA 1978. The defendant upon  
6 conviction shall be required to pay the actual costs of his  
7 supervised probation service to the adult probation and parole  
8 division of the corrections department or appropriate  
9 responsible agency for deposit to the corrections department  
10 [~~intensive~~] community supervision fund not exceeding one  
11 thousand twenty dollars (\$1,020) annually to be paid in monthly  
12 installments of not less than fifteen dollars (\$15.00) and not  
13 more than eighty-five dollars (\$85.00), subject to  
14 modification, upon court approval, by the appropriate district  
15 supervisor of the adult probation and parole division or the  
16 local supervisor of the responsible agency on the basis of  
17 changed financial circumstances, and may be required to:

18 A. [~~to~~] provide for the support of [~~any~~] persons  
19 for whose support he is legally responsible;

20 B. [~~to~~] undergo available medical or psychiatric  
21 treatment and [~~to~~] enter and remain in a specified institution  
22 when required for that purpose;

23 C. [~~to~~] be placed on probation under the  
24 supervision, guidance or direction of the adult probation and  
25 parole division of the corrections department for a term not to

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1 exceed five years;

2 D. ~~[\u00d7\u2099]~~ serve a period of time in volunteer labor  
3 to be known as "community service". The type of labor and  
4 period of service shall be at the sole discretion of the court;  
5 provided that ~~[any]~~ a person receiving community service shall  
6 be immune from any civil liability other than gross negligence  
7 arising out of the community service, and ~~[any]~~ a person who  
8 performs community service pursuant to court order or ~~[any]~~ a  
9 criminal diversion program shall not be entitled to ~~[any]~~  
10 wages, shall not be considered an employee ~~[for any purpose]~~  
11 and shall not be entitled to workers' compensation,  
12 unemployment benefits or any other benefits otherwise provided  
13 by law. As used in this subsection, "community service" means  
14 ~~[any]~~ labor that benefits the public at large or ~~[any]~~ a  
15 public, charitable or educational entity or institution;

16 E. ~~[\u00d7\u2099]~~ make a contribution of not less than ten  
17 dollars (\$10.00) and not more than one hundred dollars (\$100),  
18 to be paid in monthly installments of not less than five  
19 dollars (\$5.00), to a local crime stopper program or a local  
20 drug abuse resistance education program that operates in the  
21 territorial jurisdiction of the court. If there is no program  
22 in that area, the contribution shall be made to the crime  
23 stoppers commission; and

24 F. ~~[\u00d7\u2099]~~ satisfy any other conditions reasonably  
25 related to his rehabilitation. "

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1           Section 2. Section 31-21-10 NMSA 1978 (being Laws 1980,  
2 Chapter 28, Section 1, as amended) is amended to read:

3           "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

4           A. An inmate of an institution who was sentenced to  
5 life imprisonment as the result of the commission of a capital  
6 felony, who was convicted of three violent felonies and  
7 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978  
8 or who was convicted of two violent sexual offenses and  
9 sentenced pursuant to Subsection A of Section 31-18-25 NMSA  
10 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a  
11 parole hearing after he has served thirty years of his  
12 sentence. Before ordering the parole of an inmate sentenced to  
13 life imprisonment, the board shall:

14                   (1) interview the inmate at the institution  
15 where he is committed;

16                   (2) consider all pertinent information  
17 concerning the inmate, including:

18                           (a) the circumstances of the offense;

19                           (b) mitigating and aggravating  
20 circumstances;

21                           (c) whether a deadly weapon was used in  
22 the commission of the offense;

23                           (d) whether the inmate is a habitual  
24 offender;

25                           (e) the reports filed under Section

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1 31-21-9 NMSA 1978; and

2 (f) the reports of such physical and  
3 mental examinations as have been made while in an institution;

4 (3) make a finding that a parole is in the  
5 best interest of society and the inmate; and

6 (4) make a finding that the inmate is able and  
7 willing to fulfill the obligations of a law-abiding citizen.

8 If parole is denied, the inmate sentenced to life  
9 imprisonment shall again become entitled to a parole hearing at  
10 two-year intervals. The board may, on its own motion, reopen  
11 any case in which a hearing has already been granted and parole  
12 denied.

13 B. Unless the board finds that it is in the best  
14 interest of society and the parolee to reduce the period of  
15 parole, a person who was convicted of a capital felony shall be  
16 required to undergo a minimum period of parole of five years.  
17 During the period of parole, the person shall be under the  
18 guidance and supervision of the board.

19 C. Except for sex offenders as provided in Section  
20 31-21-10.1 NMSA 1978, an inmate who was convicted of a first,  
21 second or third degree felony and who has served the sentence  
22 of imprisonment imposed by the court in an institution  
23 designated by the corrections department shall be required to  
24 undergo a two-year period of parole. An inmate who was  
25 convicted of a fourth degree felony and who has served the

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1 sentence of imprisonment imposed by the court in an institution  
2 designated by the corrections department shall be required to  
3 undergo a one-year period of parole. During the period of  
4 parole, the person shall be under the guidance and supervision  
5 of the board.

6 D. Every person while on parole shall remain in the  
7 legal custody of the institution from which he was released,  
8 but shall be subject to the orders of the board. The board  
9 shall furnish to each inmate as a prerequisite to his release  
10 under its supervision a written statement of the conditions of  
11 parole that shall be accepted and agreed to by the inmate as  
12 evidenced by his signature affixed to a duplicate copy to be  
13 retained in the files of the board. The board shall also  
14 require as a prerequisite to release the submission and  
15 approval of a parole plan. If an inmate refuses to affix his  
16 signature to the written statement of the conditions of his  
17 parole or does not have an approved parole plan, he shall not  
18 be released and shall remain in the custody of the institution  
19 in which he has served his sentence, excepting parole, until  
20 such time as the period of parole he was required to serve,  
21 less meritorious deductions, if any, expires, at which time he  
22 shall be released from that institution without parole, or  
23 until such time that he evidences his acceptance and agreement  
24 to the conditions of parole as required or receives approval  
25 for his parole plan or both. Time served from the date that an

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1 inmate refuses to accept and agree to the conditions of parole  
2 or fails to receive approval for his parole plan shall reduce  
3 the period, if any, to be served under parole at a later date.  
4 If the district court has ordered that the inmate make  
5 restitution to a victim as provided in Section 31-17-1 NMSA  
6 1978, the board shall include restitution as a condition of  
7 parole. The board shall also personally apprise the inmate of  
8 the conditions of parole and his duties relating thereto.

9 E. When a person on parole has performed the  
10 obligations of his release for the period of parole provided in  
11 this section, the board shall make a final order of discharge  
12 and issue him a certificate of discharge.

13 F. Pursuant to the provisions of Section 31-18-15  
14 NMSA 1978, the board shall require the inmate as a condition of  
15 parole to:

16 (1) [~~to~~] pay the actual costs of his parole  
17 services to the adult probation and parole division of the  
18 corrections department for deposit to the corrections  
19 department [~~intensive~~] community supervision fund not exceeding  
20 one thousand twenty dollars (\$1,020) annually to be paid in  
21 monthly installments of not less than fifteen dollars (\$15.00)  
22 and not more than eighty-five dollars (\$85.00), subject to  
23 modification by the adult probation and parole division on the  
24 basis of changed financial circumstances; and

25 (2) [~~to~~] reimburse a law enforcement agency or

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1 local crime stopper program for the amount of any reward paid  
2 by the agency or program for information leading to his arrest,  
3 prosecution or conviction.

4 G. The provisions of this section shall apply to  
5 all inmates except geriatric, permanently incapacitated and  
6 terminally ill inmates eligible for the medical and geriatric  
7 parole program as provided by the Parole Board Act. "

8 Section 3. Section 31-21-13.1 NMSA 1978 (being Laws 1988,  
9 Chapter 62, Section 3, as amended) is amended to read:

10 "31-21-13.1. INTENSIVE SUPERVISION PROGRAMS. --

11 A. As used in this section, "intensive supervision  
12 programs" means programs that provide highly structured and  
13 intense supervision, with stringent reporting requirements, of  
14 certain individuals who represent an excessively high  
15 assessment of risk of violation of probation or parole,  
16 emphasize meaningful rehabilitative activities and reasonable  
17 alternatives without seriously increasing the risk of  
18 recidivist crime and facilitate the payment of restitution by  
19 the offender to the victim. Intensive supervision programs  
20 include house arrest programs or electronic surveillance  
21 programs or both.

22 B. The corrections department shall implement and  
23 operate intensive supervision programs in various local  
24 communities. The programs shall provide services for  
25 appropriate individuals by probation and parole officers of the

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1 corrections department. The corrections department shall  
2 promulgate rules [~~and regulations~~] to provide that the officers  
3 providing these services have a maximum case load of twenty  
4 offenders and to provide for offender selection and other  
5 criteria. The corrections department may cooperate with all  
6 recognized law enforcement authorities and share all necessary  
7 and pertinent information, records or documents regarding  
8 probationers or parolees in order to implement and operate  
9 these intensive supervision programs.

10 C. For purposes of this section, a judge  
11 contemplating imposition of an intensive supervision program  
12 for an individual shall consult with the adult probation and  
13 parole division of the corrections department and consider the  
14 recommendations before imposing such probation. The adult  
15 probation and parole division of the corrections department  
16 shall recommend only those individuals who would have otherwise  
17 been recommended for incarceration for intensive supervision  
18 programs. A judge has discretion to impose an intensive  
19 supervision program for an individual, regardless of  
20 recommendations made by the adult probation and parole  
21 division. Inmates eligible for parole, or within twelve months  
22 of eligibility for parole, or inmates who would otherwise  
23 remain in a correctional institution for lack of a parole plan  
24 or those parolees whose parole the board would otherwise revoke  
25 are eligible for intensive supervision programs. The

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1 provisions of this section do not limit or reduce the statutory  
2 authority vested in probation and parole supervision as defined  
3 by any other section of the Probation and Parole Act.

4 D. There is created in the state treasury the  
5 "corrections department [~~intensive~~] community supervision fund"  
6 to be administered by the corrections department upon vouchers  
7 signed by the secretary of corrections. Balances in the  
8 corrections department [~~intensive~~] community supervision fund  
9 shall not revert to the general fund. Beginning July 1, [~~1988,~~  
10 ~~the intensive supervision programs established pursuant to this~~  
11 ~~section shall be funded by those~~] 2004, supervision costs  
12 collected pursuant to the provisions of Sections 31-20-6 and  
13 31-21-10 NMSA 1978 [~~The corrections department is specifically~~  
14 ~~authorized to hire additional permanent or term full-time~~  
15 ~~equivalent positions for the purpose of implementing the~~  
16 ~~provisions of this section~~] shall be deposited in the  
17 corrections department community supervision fund and shall be  
18 used by the corrections department to fund intensive  
19 supervision programs, community corrections programs, probation  
20 supervision programs and parole supervision programs. "

21 Section 4. EFFECTIVE DATE. --The effective date of the  
22 provisions of this act is July 1, 2004.